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19 MANAGEMENT PARTNERS, LLC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LENHOFF ENTERPRISES, INC., a
California corporation dba LENHOFF
& LENHOFF,

Plaintiff,

v.

UNITED TALENT AGENCY, INC., a
California corporation;
INTERNATIONAL CREATIVE
MANAGEMENT PARTNERS LLC, a
Delaware limited liability company;
and DOES 1 through 5, inclusive,

Defendants.

Case No. 2:15-CV-01086-BRO (FFMx)

**DEFENDANT INTERNATIONAL
CREATIVE MANAGEMENT
PARTNERS, LLC'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF MOTION TO DISMISS
SECOND AMENDED COMPLAINT
AND MEMORANDUM OF POINTS
AND AUTHORITIES;**

[Fed. R. Civ. P. 12(b)(6)]

Date: December 21, 2015
Time: 1:30 p.m.
Place: Courtroom 14
Judge: Hon. Beverly Reid
O'Connell

REQUEST FOR JUDICIAL NOTICE

Defendant International Creative Management Partners LLC (“ICM Partners”) requests that the Court take judicial notice of the following document attached hereto:

1. Exhibit A is a true and correct copy of the Agreement Between Association of Talent Agents And Directors Guild of America, Inc. Of January 1, 1977 (As Restated January 1, 2004). Among other locations, this document is available at the following web address:

http://www.dga.org/~media/Files/Forms/AgencyAgmntWRiderD.ashx;_z=z

GROUND FOR JUDICIAL NOTICE

Under the doctrine of incorporation by reference, in analyzing a motion to dismiss under Federal Rule of Civil Procedure 12, a court is not bound by or limited to the allegations of the complaint alone but may take into consideration any documents referenced or relied on in the complaint. *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (court may “consider documents that were not physically attached to the complaint” but that complaint “necessarily relies on”); *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (same); *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998) (superseded by statute on other grounds) (same). Thus, a court may consider any document that either (1) is referenced in the complaint, or (2) forms the basis of the plaintiff’s claims. *Knievel*, 393 F.3d at 1076.

Courts need not accept as true any allegations in a complaint that are contradicted by matters subject to judicial notice or incorporated by reference. *See, e.g.*, *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (“The court need not . . . accept as true allegations that contradict matters properly subject to judicial notice or by exhibit.”); *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998) (court “not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint”). This rule is

1 necessary because “[w]ere courts to refrain from considering such documents,
 2 complaints that quoted only selected and misleading portions of such documents
 3 could not be dismissed under Rule 12(b)(6) even though they would be doomed to
 4 failure.” *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991); cf.
 5 *Parrino*, 146 F.3d at 705-06 (policy aimed at “[p]reventing plaintiffs from
 6 surviving a Rule 12(b)(6) motion by deliberately omitting references to documents
 7 upon which their claims are based”).

8 Under these principles, the Court may properly consider the attached
 9 Agreement Between Association of Talent Agents And Directors Guild of America,
 10 Inc. Of January 1, 1977 (As Restated January 1, 2004) (the “ATA/DGA
 11 Agreement”) in connection with ICM Partners’ Motion to Dismiss Second
 12 Amended Complaint (the “Motion”).

13 The Court previously dismissed Plaintiff’s intentional interference with
 14 contract claim, in part, because Plaintiff failed to allege “whether the contractual
 15 relationships were at will or for a specified term.” Order Granting in Part and
 16 Denying in Part Defendants’ Motions to Dismiss, Dkt No. 28, at 9 (“Order”). In its
 17 Second Amended Complaint, Plaintiff now attempts to resuscitate the claim by
 18 alleging that the purported contract at issue was “not terminable at will” pursuant to
 19 the terms of Rider “D” to the ATA/DGA Agreement. Second Amended Complaint,
 20 Dkt. No. 31, at ¶¶ 9, 128. The terms of the ATA/DGA Agreement, and Rider “D”
 21 thereto, are thus critical to the viability of Plaintiff’s claim—and, likewise, to ICM
 22 Partners’ Motion.

23 Tellingly, despite Plaintiff’s reliance on the ATA/DGA Agreement, Plaintiff
 24 opted not to attach the ATA/DGA Agreement, or even Rider “D” alone, to its
 25 pleading. This makes sense because, as explained in detail in ICM Partners’
 26 Motion, the plain language of ATA/DGA Agreement and Rider “D” contradicts
 27 Plaintiff’s assertions. *See* Mot. at Section III. By relying on but failing to attach
 28 the ATA/DGA Agreement to its pleading, Plaintiff attempts to insulate itself from a

1 motion under [Rule 12](#). This is improper, and the Court need not accept Plaintiff's
2 pleading as is. The Court may properly take judicial notice of and consider the
3 ATA/DGA Agreement and Rider D thereto because it is incorporated by reference
4 in the pleading.

5 **CONCLUSION**

6 For the foregoing reasons, ICM Partners respectfully requests that the Court
7 take judicial notice of the ATA/DGA Agreement, attached hereto as [Exhibit A](#).

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9 DATED: November 9, 2015

PERKINS COIE LLP

10 By: /s/ Michael Garfinkel
11 Michael B. Garfinkel

12 Attorneys for Defendants
13 INTERNATIONAL CREATIVE
14 MANAGEMENT PARTNERS, LLC

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